
THE EVOLVING APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN NON-INTERNATIONAL ARMED CONFLICTS: RETHINKING COMPLIANCE THROUGH SUDAN CONFLICT

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ABSTRACT

The increasing prevalence of non-international armed conflicts (NIACs) in contemporary warfare has fundamentally reshaped the landscape of international humanitarian law (IHL). While the legal regime and framework governing such conflicts has expanded significantly through treaty law, customary norms, and international jurisprudence, questions remain regarding its effectiveness in practice. This article argues that the challenge is no longer the absence of legal rules, but rather the persistent gap between normative development and real-world compliance. Using the on-going Sudan conflict as a case study, the article examines how core IHL principles, particularly distinction, proportionality, and humanitarian access are applied in contemporary conflict settings. It contends that while IHL has successfully adapted to the realities of internal conflicts at a doctrinal level, enforcement and compliance mechanisms remain structurally weak. The Sudan conflict thus reflects not a failure of law, but a failure of implementation.

Introduction

Even wars have limits but those limits are only meaningful if they are observed.¹

Armed conflict has always been a part of human history, but the way wars are fought today is significantly different from how they were fought in the past. Since the end of the Second World War, there has been a noticeable shift in the nature of conflicts across the world.² Instead of wars being fought mainly between states, most modern conflicts now occur within states, involving government forces, paramilitary groups, and a range of non-state actors operating within complex political and social environments.³

Conflicts of this kind, commonly referred to as non-international armed conflicts (NIACs) have arguably become the predominant form of warfare in the contemporary world. Unlike traditional interstate wars, they are often prolonged, complex, and fought within civilian-populated areas. As a result, civilians are frequently the most affected, facing displacement, destruction of infrastructure, and loss of basic necessities.⁴

International Humanitarian Law (IHL) was originally designed with a primary focus to regulate wars between states. However, as the nature of conflict has changed, so too has the law. Over time, legal rules have developed to address internal conflicts, extending humanitarian protections beyond traditional battlefields. Despite these developments, serious questions remain about how effectively these laws are applied in practice.

The on-going conflict in Sudan provides a clear and contemporary example of these challenges. Since April 2023, violence between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) has resulted in widespread humanitarian suffering.⁵ This article examines how international humanitarian law applies to such conflicts and whether it is capable of addressing the realities of modern warfare.

This article argues that the evolution of IHL in NIACs has reached a point where doctrinal development is no longer the primary concern. Instead, the central challenge lies in ensuring compliance with existing rules. By examining both the legal framework and its particular

¹ Int'l Comm. of the Red Cross, *International Humanitarian Law: Answers to Your Questions* (2015).

² Antonio Cassese, *International Law* (2d ed. 2005).

³ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford Univ. Press 2012).

⁴ Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (3d ed. 2012).

⁵ Int'l Crisis Grp., *Sudan's Military Rivalry* (2023).

application in Sudan, this article seeks to show that the limitations of IHL today are less about what the law says, and more about how (and whether) it is followed.

In order to understand how international humanitarian law operates in such contexts, it is first necessary to examine the evolution of the legal framework governing non-international armed conflicts.

Evolution of Legal Framework in Non-International Armed Conflicts

For a very long time, international law avoided regulating internal conflicts. States considered civil wars to be domestic jurisdiction matters, and external interference was generally discouraged as it would risk infringing State sovereignty.⁶ However, the humanitarian consequences of such conflicts throughout the 20th century eventually led to the development of legal standards applicable even within state borders.

A major turning point came with the adoption of the Geneva Conventions in 1949. Common Article 3, which is shared by all four conventions, introduced minimum humanitarian protections in situations of non-international armed conflict.⁷ It requires humane treatment of persons who are not actively participating in hostilities and prohibits acts including of torture, cruel treatment, and hostage-taking.

Although Common Article 3 was a significant step forward, it remained limited in scope. Further developments came with the adoption of Additional Protocol II in 1977, which expanded protections for civilians and introduced more detailed rules governing internal conflicts.⁸ However, its application is subject to certain conditions, including the requirement that armed groups possess a certain level of organization and territorial control.

In addition to treaty law, customary international humanitarian law has played an important role in strengthening the legal framework. Over time, several principles originally developed for international conflicts such as distinction and proportionality have become applicable to

⁶ Cassese, *supra* note 2.

⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 75 U.N.T.S. 287.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts art. 1, June 8, 1977, 1125 U.N.T.S. 609.

non-international armed conflicts as well.⁹

Judicial decisions have also contributed to this evolution. In the case of *Prosecutor v. Tadić*, Case No. IT-94-1 (1995), the International Criminal Tribunal in its decision for the Former Yugoslavia established that a non-international armed conflict arises in situations involving armed violence between organised armed groups.¹⁰ This definition has since been widely accepted and applied in international law stating that humanitarian norms apply irrespective of formal classification of the conflict

Taken together, these developments suggest that the legal framework governing NIACs is no longer underdeveloped. On the contrary, it has evolved into a relatively comprehensive system of rules designed at protecting civilians while restricting the conduct of hostilities.

Having examined the legal framework governing non-international armed conflicts, it is now necessary to consider the fundamental principles that guide the conduct of hostilities in such conflicts.

Fundamental Principles of International Humanitarian Law and Compliance in NIACs

International humanitarian law has certain fundamental rights at its core that regulate the conduct of warfare and hostilities in order to uphold human rights. These principles are intended to limit the effects of armed conflict even in situations where violence is inevitable and cannot be avoided.

At the same time, the continued prevalence of violations raises an important question: if international humanitarian law has indeed evolved, why are human rights violations remaining so pervasive then? One possible answer to this lies in the nature of the actors involved in NIACs. Unlike interstate conflicts which typically involve relatively structured and accountable entities, internal conflicts often involve fragmented armed groups with varying degrees of organisation and commitment to legal norms.¹¹

This transformation in the nature of warfare, often described as the emergence of “new wars”,

⁹ Protocol Additional to the Geneva Conventions, *supra* note 8.

¹⁰ *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on Jurisdiction (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

¹¹ Sivakumaran, *supra* note 3.

has significantly complicated the application of international humanitarian law in practice.¹² The increasing complexity of modern conflicts has been widely discussed in academic literature, particularly in relation to the challenges they pose to the application of international humanitarian law.¹³

One of the most foundational principles of international humanitarian law is that of distinction, which is well established in both treaty law and customary international law.¹⁴ This principle obliges parties to any armed conflict to consistently differentiate between civilians and combatants, as well as between civilian objects and military objectives.¹⁵ Consequently, attacks may only be directed against lawful military targets, while civilians must be protected from direct attack. However, the application of this principle in practice is often complicated by the realities of modern warfare, particularly in urban environments where civilian and military objects are closely intertwined.

Another key rule is the principle of proportionality, which forbids attacks expected to cause incidental civilian loss or damage to civilian objects where such harm would be excessive relative to the anticipated military advantage.¹⁶ While this principle allows for the pursuit of legitimate military objectives, it places an important limitation on the extent of permissible harm that may be inflicted. In practice, however, applying proportionality can be challenging, as it requires a careful and often subjective balancing of military necessity and humanitarian considerations.

Another important principle is the obligation to take precautions in attack. Parties to a conflict are required to adopt all feasible precautions aimed at minimizing harm to civilians. This entails confirming that targets qualify as military objectives and choosing means and methods of warfare that limit risks to the civilian population.

In addition to the above principles, the principle of humanity also plays a fundamental role in international humanitarian law. This principle underlies the entire framework of humanitarian law and requires that individuals who are not participating in hostilities be treated with dignity and respect. It prohibits unnecessary suffering and forms the moral foundation upon which

¹² Christine Chinkin & Mary Kaldor, *International Law and New Wars*, 28 *Eur. J. Int'l L.* 1 (2017).

¹³ Dapo Akande Turns, *The Law of Armed Conflict in Contemporary Warfare*, 93 *Int'l Rev. Red Cross* 37 (2010).

¹⁴ Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law* (2005).

¹⁵ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3d ed. 2016).

¹⁶ Marco Sassòli, *International Humanitarian Law* (2019).

other legal rules are built. While often less explicitly discussed than distinction or proportionality, the principle of humanity is reflected in provisions such as Common Article 3 of the Geneva Conventions, which prohibits violence, torture, and degrading treatment.¹⁷

These principles collectively form the foundation of international humanitarian law and are essential for understanding how the law operates in practice. At the same time, their effectiveness ultimately depends not only on their existence as legal norms, but on the willingness and ability of parties to a conflict to comply with them.

While these principles provide a clear legal framework, their effectiveness can only be fully understood when examined in the context of an actual conflict.

Sudan as a Case Study in Legal Limits

The conflict in Sudan began in April 2023 following tensions between the Sudanese Armed Forces and the Rapid Support Forces.¹⁸ This conflict highlights the practical challenges of applying international humanitarian law in contemporary non-international armed conflicts. Since its outbreak in April 2023, the conflict has been marked by intense fighting in urban areas, particularly in Khartoum.¹⁹

Urban warfare presents serious difficulties for the application of IHL principles. The presence of civilians, combined with the use of heavy weapons, increases the risk of civilian casualties and damage to infrastructure. Reports from humanitarian organisations indicate that homes, hospitals, and public facilities have been significantly affected by the conflict.²⁰

The impact of the conflict extends beyond immediate physical harm. The destruction of infrastructure, including water systems, electricity networks, and healthcare facilities, has significantly affected the daily lives of civilians. This has created long-term humanitarian challenges, particularly for vulnerable populations such as children, the elderly, and displaced persons. The cumulative effect of these conditions further highlights the limitations of international humanitarian law when confronted with complex and prolonged internal conflicts, where enforcement mechanisms remain weak and access to affected areas is

¹⁷ Geneva Convention, *supra* note 7.

¹⁸ Int'l Crisis Grp., *supra* note 5.

¹⁹ Hum. Rts. Watch, *Sudan: Escalating Civilian Harm in the Armed Conflict* (2023).

²⁰ Amnesty Int'l, *Sudan: Civilians at Risk Amid Escalating Conflict* (2024).

restricted.

The principle of distinction becomes especially difficult to apply in such environments, where military objectives may be located within civilian areas. Millions of civilians have been displaced as a result of the on-going conflict.²¹ Similarly, concerns arise regarding proportionality when attacks result in widespread destruction and civilian harm.

Humanitarian access has also been severely restricted during the conflict. Aid organisations have faced challenges in delivering assistance due to on-going hostilities and security concerns.²² In some cases, humanitarian workers themselves have been targeted, further complicating relief efforts.

In addition, reports of attacks on medical facilities raise serious concerns under international humanitarian law. Medical units are entitled to special protection, and attacks against them may constitute war crimes under international criminal law.²³

The Sudan conflict therefore demonstrates the gap between legal principles and their practical implementation. While the law provides clear rules, enforcing those rules remains a significant challenge.

Role of International Organizations

International organisations play an important role in promoting compliance with international humanitarian law. Institutions such as the International Committee of the Red Cross (ICRC), the United Nations, and various humanitarian agencies are actively involved in monitoring conflicts, providing assistance, and advocating for the protection of civilians.

In the Sudan conflict, organisations such as the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations High Commissioner for Refugees (UNHCR) have been instrumental in documenting humanitarian conditions and assisting displaced populations. However, their effectiveness is often limited by security constraints and lack of access.

²¹ U.N. High Comm'r for Refugees, *Sudan Situation Report* (2024).

²² U.N. Office for the Coordination of Humanitarian Affairs, *Sudan Humanitarian Overview* (2023).

²³ Rome Statute of the International Criminal Court art. 8, July 17, 1998, 2187 U.N.T.S. 90.

Rethinking the Role of IHL in Contemporary Conflicts

The Sudan conflict does not necessarily indicate that international humanitarian law has failed. Rather, it highlights the limits of what law alone can achieve. IHL is designed to regulate conduct, not to prevent conflict altogether. Its effectiveness therefore depends on factors that extend beyond legal rules, including political will, military discipline, and international enforcement mechanisms.

This suggests that future efforts to strengthen humanitarian protection should focus not only on developing new rules, but also on improving compliance with existing ones. Greater engagement with non-state armed groups, enhanced monitoring mechanisms, and more effective accountability processes may be necessary to bridge the gap between law and practice.

Conclusion

The evolution of international humanitarian law in non-international armed conflicts represents one of the most significant developments in modern international law. From the limited protections of Common Article 3 to the broader framework of customary law and international criminal accountability, the law has adapted to the realities of contemporary warfare.

However, the Sudan conflict illustrates that the existence of legal rules does not automatically ensure compliance. The realities of modern warfare, urban fighting, fragmented armed groups, and political complexities continue to challenge the effectiveness of humanitarian law.

Understanding this gap is essential for any meaningful assessment of IHL. The future of humanitarian law must focus not only on the creation of new rules, but on strengthening mechanisms for enforcement and compliance. This may include greater engagement with non-state armed groups, improved monitoring systems, and stronger international accountability mechanisms.

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